IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1262 of 2001

to

FIRST APPEAL No 1289 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

SPECIAL LAND ACQUISITION OFFICER

Versus

GOVINDBHAI LALJIBHAI

Appearance:

MR MUKESH PATEL AGP for Appellants

MR NITIN M AMIN for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 21/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. The objection that these appeals are barred by limitation for eight days was based on the ground that, along with the appeal, certified copy of the decree was not filed and only a certified copy of the judgment was filed. The learned Assistant Government Pleader has submitted that the certified copy of the decree became available a little later and, therefore, the same was filed subsequently and, otherwise, the appeals are within time as per the certified copy of the judgment. It is submitted that this position has been explained by the office of the Government Pleader through his letter dated 4.9.2000 and it appears that thereafter the Registry itself has given regular number to these appeals. Mr.N.M.Amin has no objection if these appeals are treated within time. In this view of the matter, we hereby order that the appeals be treated within time.

2. ADMIT. Issue Notice. Mr.N.M.Amin appears on behalf of the respondents-claimants and waives service in all these appeals. On the request of both the sides, the appeals are taken up for final hearing right today.

3. This group of First Appeals, 28 in number, filed under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure are directed against the judgment and award dated 28.12.1999 passed by the 2nd Extra Assistant Judge & Special Judge (Land Acquisition Reference), Ahmedabad (Rural), Mirzapur in Land Acquisition Cases No.2556 of 1996 to 2583 of 1996, the Land Acquisition Case No.2556 of 1996 being the main case.

4. The lands of Village Sundariyana, Taluka Dhandhuka, District Ahmedabad, were sought to be acquired for Narmada Project Limbdi Branch Canal. For this purpose, the notification under Section 4 was issued on 12.10.1992 and the notification under Section 6 was issued on 7.7.1993. The Land Acquisition Officer passed the award on 7.12.1995 determining the rate of compensation as Rs.00.80 ps. to Rs.1.20 ps. per sq. mtr. The land owners took the matter for Reference under Section 18 and the Reference Court has passed the order dated 28.12.1999 determining the rate of compensation as Rs.28/- per sq. mtr. in all. The Reference Court had placed reliance on the previous awards at Exhs.51 to 59 with regard to acquisition of lands in different villages

surrounding or in periphery of the village in the present cases. In case of the previous awards at Exhs.51 to 59, notifications under Section 4 were issued on various dates ranging between the years 1982 and 1988. The Reference Court has discussed the details in para 21 of the impugned award, and the lands which were acquired in the cases of Exhs.51 to 59 and the lands which have been acquired in the present cases have been found to be identical and comparable in potentiality and its fertility. In case of the previous awards at Exhs.51 to 59, the lands under acquisition were from villages Ranpur, Khas, Dharipipla, Sarangpur, Barwala, Kinara and Patana and, after looking into the map which had been produced before the Reference Court by the claimants, the Reference Court has found that these villages are situated in a line in series and the village Sundariyana is between the villages Patana and Barvala and Khas. The Reference Court has also noted that while fixing the market rate, reliance had been placed on the judgment of the Court leading to acquisition of lands in the same or adjoining villages. Evidence has also been led before the Reference Court that the land of village Sundariyana is similar in nature, potentiality and fertility to the adjoining villages as aforesaid. The Reference Court has also considered the rates at which the compensation was fixed in the previous awards and keeping such rates in view and with reference to the dates of notifications under Section 4 in respective cases, has rightly come to the conclusion that in the present cases the rate should be fixed at Rs.28/- per sq. mtr. We find that the conclusion arrived at by the Reference Court for payment of compensation at Rs.28/- per sq. mtr. is just, proper and adequate and does not warrant any interference by this Court.

5. Mr.Amin has also invited our attention to the decision of this Court in First Appeals No.610 of 2001 to 616 of 2001 decided on 13.2.2001 wherein the concerned village was Rojid and in other group of First Appeals No.2550 of 2000 to 2584 of 2000 decided on 16.10.2000, the concerned village was Vahiya. In these two cases, the awards fixing the rate at Rs.28/- per sq. mtr. and Rs.29/- per sq. mtr. were maintained. These two villages are also in close proximity with the village Sundariyana. In this view of the matter, we do not find any reason to interfere with the rate of compensation of Rs.28/- per sq. mtr. as has been fixed by the Reference Court.

6. Mr.Mukesh Patel then invited our attention to the direction given by the Reference Court that 5% Government

Share shall not be deducted from the compensation of new tenure lands. The submission of Mr.Mukesh Patel is that this is contrary to the Gujarat State Amendment in the Land Acquisition Act by way of Section 11-A and, therefore, this deduction should have been allowed in favour of the appellants. Mr. Nitin Amin for the respondents-claimants has submitted that the respondents-claimants do not contest if the award is modified to that extent. We, therefore, order that the cases in which the land is new tenure, 5% Government Share shall be deducted from the compensation awarded. The impugned award in each of these matters stands modified accordingly and the rights of the parties shall be governed in light of the modification as ordered by this Court hereinabove and the decree be drawn accordingly.

7. All these 28 First Appeals are partly allowed to the limited extent as above with no order as to costs. It is expected that the due amount of compensation with the modification as above shall be paid to the respondents-claimants within a period of three months from the date the certified copy of this order is served by either of the parties upon the concerned authorities.

Sd/-
(M.R.Calla, J.)

Sd/-

21.3.2001 (D.H.Waghela, J.)
(KMG Thilake)